

Title 18. State Board of Equalization

NOTICE IS HEREBY GIVEN

The State Board of Equalization (the Board), pursuant to the authority vested in it by section 32451 of the Alcoholic Beverage Tax Law, proposes to adopt the following regulations: 2558. *Distilled Spirits*, 2559. *Presumption – Distilled Spirits*, 2559.1. *Rebuttable Presumption – Distilled Spirits*, 2559.3. *Internet List* and 2559.5. *Correct Classification*.

A public hearing on the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on Thursday, November 15, 2007. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by the time of the public hearing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

It was brought to the Board's attention, through a petition for rulemaking, that the definitions of "beer" and "distilled spirits" require clarity with respect to the classification of an alcoholic beverage commonly referred to as a flavored malt beverage (FMB). Neither California law, nor federal law, has a specific definition of FMB.

The Board proposes to adopt the following new regulations in order to clarify when an alcoholic beverage meets the definition of a "distilled spirit" or a "beer":

Regulation 2558. Distilled Spirits.

This regulation establishes that, effective July 1, 2008, a distilled spirit would include an alcoholic beverage, except wine as defined in Business and Professions Code section 23007, which contains 0.5 percent or more alcohol by volume from flavors or ingredients containing alcohol from the distillation of fermented agricultural products.

Regulation 2559. Presumption – Distilled Spirits.

This regulation establishes a presumption that alcoholic beverages, except wine as defined in Business and Professions Code section 23007, contain 0.5 percent or more alcohol by volume from flavors or ingredients containing alcohol obtained from the distillation of fermented agricultural products.

Regulation 2559.1. Rebuttable Presumption – Distilled Spirits.

This regulation allows the manufacturer of an alcoholic beverage to rebut the presumption set forth in proposed Regulation 2559 as to any particular alcoholic beverage by filing a statement, under penalty of perjury, that specifies the sources and amount of the alcohol content of the beverage. Additionally, this regulation provides that the Board may require a copy of a manufacturer's "Statement of Process" or product

“Formula” filed with the Alcohol and Tobacco Tax Trade Bureau, its predecessor agency or successor agency, for any alcoholic beverage.

Regulation 2559.3. Internet List.

This regulation establishes and provides a time frame for Board staff to create and maintain an Internet listing of alcoholic beverages that have been found to have successfully rebutted the presumption set forth in proposed Regulation 2559.

Regulation 2559.5. Correct Classification.

This regulation provides that a taxpayer may rely on the Internet listing set forth in proposed Regulation 2559.3 for purposes of tax reporting with respect to alcoholic beverage products shown on the Board’s Internet list at the time the tax liability was incurred.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed regulatory action will result in no direct or indirect cost or savings to any state agency, or any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5, subdivision (a)(7), the Board makes an initial determination that the proposed Regulations will not have a significant statewide adverse economic impact directly affecting business.

The adoption of the proposed regulations will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, nor create or expand business in the State of California.

The regulations proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulations may affect small business.

COST IMPACT ON PRIVATE PERSON OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

The proposed regulations are comparable to Federal Regulation 27 CFR § 25.15.

AUTHORITY

Section 32451 of the Revenue and Taxation Code.

REFERENCE

Revenue and Taxation Code sections 32002, 32452 and 32453 and Business and Professions Code sections 23004, 23006 and 23007.

CONTACT

Questions regarding the substance of the proposed regulatory action should be directed to Ms. Monica Gonzalez Brisbane, (916) 322-0438, email Monica.Brisbane@boe.ca.gov, or by mail to: State Board of Equalization, Attn: Monica Gonzalez Brisbane, MIC:82, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Mira Tonis, telephone (916) 319-9518, e-mail Mira.Tonis@boe.ca.gov or by mail at State Board of Equalization, Attn: Diane Olson or Mira Tonis, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the Board's attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed regulatory action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscore and strike-out version (express terms) of the proposed regulations. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulations are available on the Internet at the Board's Web site, <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's Web site following the public hearing of the proposed regulation. It will also be available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the Board may, in accordance with law, adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the Board makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulations. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson or Ms. Tonis. The Board will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.